IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 24 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEENABEN @ SEEMA @ ANISHA W/O MAHMAD HANIF SHAIKH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS RUPAL R PATEL for Appellant
MS DS PANDIT, ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 04/10/2007

ORAL JUDGMENT

1. The appellant lady has challenged the legality and validity of the order of conviction and

sentence passed by the learned Additional Sessions Judge, Bharuch, dated 22nd April, 2002 in Sessions Case No. 183/98. The learned trial Judge held the applicant guilty of the charge of offence punishable under Sections 328 and 379 of I.P.C., and the appellant-convict has been sentenced to undergo simple imprisonment for a period of 7 years and to pay fine of Rs. 1,000/- for the offence punishable under Section 328 of I.P.C. The appellant-convict has also been sentenced to undergo simple imprisonment for 2 years for the offence punishable under Section 379 of I.P.C. and to pay fine of Rs. 500/-. In default of fine, punishment of simple imprisonment for six months and three months respectively has been imposed upon the appellant-convict for both the offences.

2. The memo of the appeal has been received through the jail authorities. Ms. Rupal Patel has appeared for the appellant-convict under the instructions given by the Registry of this Court.

3. I have heard Ms. Rupal Patel, learned counsel

for the appellant. She has taken me through the facts placed before the trial court and the evidence led before it to bring out the charge. Similarly, Ms. D.S. Pandit, learned APP, appearing for the State has also made submissions praying that the order of conviction and sentence may be upheld as there is no illegality or perversity in the finding arrived at by the learned trial Judge.

4. It has emerged from the evidence and also from the judgment under challenge that the appellant, even on the date of commission of the offence was habitual offender and details were also placed before the learned trial Judge about her previous convictions that were imposed upon the appellant in other cases. However, at present, this Court is not concerned with those aspects. Paramount question raised before this Court by way of the present appeal is that the conviction recorded by the learned trial Judge in the present case is invalid and based on illegal finding.

5. To appreciate the case of the appellant and the

submissions made by Ms. Rupal Patel before this Court, firstly it would be beneficial to state the case of the prosecution in brief.

6. It is alleged that on 6th June, 1995, victim Taruna was travelling in Baroda Express while she was going to Bombay. She had occupied a seat in the ladies' compartment. Along with other lady passengers, appellant herein was also travelling in the said compartment. It is alleged that when the train was about to reach Bharuch, the appellant had requested and persuaded the complainant Taruna to have a biscuit from the tin which the appellant was carrying with her. Initially, complainant Taruna had refused to accept the biscuit, but thereafter, again the appellant had offered a glass of water to Taruna. Taruna was also offered some comfort by the appellant in the form of one cloth so that she could have sleep in the compartment. It is the case of the prosecution that thereafter, the complainant Taruna had become unconscious and therefore, Bombay police had shifted Taruna to Nair

Hospital at Bombay. Taruna regained her consciousness on third day and found that she had lost one VIP bag, a bunch of keys, gold earrings, Mangal Sutra etc. and other ornaments that were put in the purse which was put in the VIP bag. Those ornaments were belonging to the mother of Taruna. Thus, complainant Taruna had lost property worth Rs. 55,000/- to Rs. 57,000/- including gold worth 14 Tolas. Thereafter, Taruna had lodged a complaint with P.S.I. Shri Patil. It is alleged that after the arrest of the appellant-accused, complainant Taruna was called to attend the test identification parade which was organized by the police in presence of Executive Magistrate, Bharuch and during that test identification parade, Taruna had identified the present appellant as the lady who had offered her biscuits and glass of water. Some muddamal was also found from the conscious possession of the accused and during the investigation, the police was able to recover some amount of gold in the form of ingots. On completion of the investigation, the police had

filed charge sheet.

7. The complaint recorded by the Bombay police is in Marathi language, however, the complainant Taruna has stated that she knew Marathi language and that she was able to give complaint in Marathi, which was recorded by P.S.I. Shri Patil.

8. On close reading of the evidence of Taruna, it is clear that there are no material contradictions qua her version before the trial court and the complaint given by her to the Bombay police. Test identification parade panchnama has also been proved by competent witnesses including the Executive Magistrate. Complainant Taruna has also stated that she was able to identify the appellant during the test identification parade panchnama and thereafter, again she had identified the appellant when she was brought before the court during the trial.

9. When there is no dispute as to the recovery of the muddamal from the conscious possession of the appellant-accused or at her instance and there is no material infirmity in the evidence

of the complainant, the trial court should have held the appellant-convict guilty on the sole testimony of the victim-complainant, otherwise, she had no animosity with the accused. It is difficult for the Court to accept the say of the defence that as the police was not able to resolve the crime registered at Bombay and as the present appellant was habitual offender, she might have been implicated falsely. One contradiction that has come on the record with the seizure of the gold in the Court does not go to the root of the validity of the order of conviction. It appears that the goldsmith who was interested in the muddamal at the end of the trial, has decided not to support the case of the prosecution and therefore, he had turned hostile. Hostility of this witness, that is, goldsmith examined by the prosecution does not affect the strength of the evidence given by the complainant Taruna.

10. The learned trial Judge has discussed practically all relevant aspects before recording the finding. The learned trial Judge

has also applied mind while awarding punishment in the nature of substantive sentence. This Court is of the view that in such or similar cases, the Presiding Officer should not develop a tendency to impose simple imprisonment merely because the accused is a lady. Gravity of the crime, if is found serious, then, the Presiding Judge of the Court should normally impose rigorous imprisonment in absence of compelling reasons like age of the accused etc. However, as the State has not preferred any appeal for enhancement of sentence under Section 377 of the Code of Criminal Procedure, it would not be legal or proper for this Court to convert simple imprisonment into rigorous imprisonment.

11. It is not necessary for this Court to re-write the judgment merely because the Court is vested with the jurisdiction to re-evaluate the evidence while dealing with the appeal preferred under Section 374 read with Section 386 of the Code of Criminal Procedure. This Court can adopt reasons assigned by the learned trial Judge if they are found good and sound

reasons for arriving at a conclusion. Here, in the present case, the learned trial Judge, in the opinion of this Court, has rightly observed that the prosecution has successfully established the charge and there was no reason for the trial court to disbelieve the complainant Taruna. The learned trial Judge has ordered that some of the articles may be handed over to the victim Taruna. It was not the say of the appellant that the articles which were before the Court belonged to her. In short, this Court finds no merits in the appeal and the appeal is dismissed. By adopting the reasons assigned by the learned trial Judge, the judgment and order of conviction and sentence rendered in Sessions Case No. 183 of 1998 by the learned Additional Sessions Judge, Bharuch on 22nd April, 2002 is hereby upheld. The order as to disposal of the muddamal passed by the learned trial Judge shall remain unaltered and the learned Chief Judicial Magistrate, Bharuch, shall now undertake an inquiry as to how valuable muddamal could be disposed of under the

scheme of Section 452 of the Code of Criminal Procedure.

12. Before parting with the order, it is necessary to see that according to Ms. Rupal Patel, in the present case, the appellant-convict must have completed total period of imprisonment imposed on her much earlier. Therefore, if she has served the sentence including the imprisonment imposed upon her by the trial court, obviously she may not have to undergo imprisonment for the present offence but if the jail authorities find that she had absconded during the period of sentence imposed by the trial court in the present case, then, appropriate steps to secure her presence may be taken and she may be kept in prison to serve the remaining part, that is, unserved sentence. The appeal is accordingly dismissed.

[C.K. BUCH, J.]

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